

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
POWER COMPANY FOR APPROVAL OF A)	
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR ENVIRONMENTAL)	CASE NO.
PROJECT CONSTRUCTION AT THE)	2021-00004
MITCHELL GENERATING STATION, AN)	
AMENDED ENVIRONMENTAL COMPLIANCE)	
PLAN, AND REVISED ENVIRONMENTAL)	
SURCHARGE TARIFF SHEETS)	

ORDER

On August 2, 2021, Kentucky Power Company (Kentucky Power) filed a motion, pursuant to KRS 278.400, requesting partial rehearing of the Commission’s July 15, 2021 Order (Final Order) on three issues that Kentucky Power asserted were unaddressed in the Final Order in this matter. The Final Order, among other things, granted a Certificate of Public Convenience and Necessity (CPCN) to construct its 2021 Environmental Compliance Plan, as set out in its application as Case 2, for projects at its Mitchell Generating Station (Mitchell) to comply with recent revisions to the federal Coal Combustion Residuals Rule (CCR) and denied a CPCN for projects to comply with Effluent Limitations Guidelines (ELG).

On August 6, 2021, the Attorney General of the Commonwealth of Kentucky, by and through the Office for Rate Intervention and Kentucky Industrial Utility Customers, Inc. (Attorney General/KIUC) filed a response to Kentucky Power’s motion for rehearing

and on August 9, 2021, Sierra Club also filed a response. On August 13, 2021, Kentucky Power filed a reply. This matter now stands submitted for a decision.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An Order can only be unlawful if it violates a state or federal statute or constitutional provision.²

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

KENTUCKY POWER’S MOTION FOR REHEARING

Kentucky Power requested rehearing on three issues that Kentucky Power stated were unaddressed: (1) its proposed 20 percent annual depreciation rate for CCR investments at Mitchell; (2) its request for a finding that \$1.903 million Kentucky jurisdictional Mitchell ELG costs incurred prior to the July 15, 2021 Order were prudently

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

incurred; and (3) its request for regulatory asset treatment for \$1.903 million of Kentucky jurisdictional Mitchell ELG costs incurred prior to July 15, 2021 Order, which Kentucky Power will request recovery of in its next base rate case.³ Kentucky Power argued that its proposed depreciation rates are necessary to fully recover the CCR projects through Mitchell's useful life of 2028.⁴ Kentucky Power also argued that its deferred ELG expenditures represent extraordinary, nonrecurring expenses that could not have been anticipated or included in Kentucky Power's planning, as well as expenses resulting from statutory and administrative directives, and thus are eligible for approval as regulatory assets.⁵

INTERVENOR RESPONSES

The Attorney General/KIUC stated that their witness Lane Kollen proposed that the 20 percent depreciation rate for CCR projects be denied and the presently authorized rates remain in effect, with the remaining net book value at retirement and actual decommissioning costs recovered through Kentucky Power's Decommissioning Rider, which currently recovers decommissioning costs for Kentucky Power's Big Sandy Generating Station (Big Sandy).⁶ The Attorney General/KIUC argued that the remaining net book value of Mitchell could be recovered after retirement because customers will benefit from more economic generating resources.⁷ The Attorney General/KIUC also

³ Kentucky Power's Motion for Rehearing (filed Aug. 2, 2021) at 1.

⁴ *Id.* at 2–3.

⁵ *Id.* at 6.

⁶ Attorney General/KIUC's Response to Kentucky Power's Motion for Rehearing (filed Aug. 6, 2021) at 2.

⁷ *Id.* at 3.

argue that the CCR projects will continue to provide benefits if Mitchell operates beyond 2028, and emphasized the uncertainty regarding the actual closure date of Mitchell.⁸ The Attorney General/KIUC deferred to the Commission's discretion regarding the \$1.903 million costs incurred prior to July 15, 2021 Order and potential regulatory asset.⁹

Sierra Club took no position on the CCR depreciation rates, but opposed recovery of previous incurred ELG costs.¹⁰ Sierra Club argued that its opposition to the ELG project included previously incurred costs, which should be the responsibility of shareholders.¹¹ Alternately, Sierra Club argued that Kentucky Power has not met its burden of proof that the previously incurred costs are reasonable and prudent because the minimal information included in Kentucky Power's testimony and brief was insufficient.¹²

KENTUCKY POWER'S REPLY

In response to the Attorney General/KIUC's argument against the 20 percent depreciation rate for CCR projects, Kentucky Power argued that the Attorney General/KIUC cannot simultaneously argue that ELG projects should not be installed at Mitchell, thus precipitating Mitchell's closure in 2028 and that Kentucky Power cannot recover the CCR costs over the remaining useful life of Mitchell.¹³ Kentucky Power also

⁸ *Id.* at 3.

⁹ *Id.* at 3.

¹⁰ Sierra Club's Response to Kentucky Power's Request for Rehearing (filed Aug. 9, 2021) at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 3.

¹³ Kentucky Power's Reply in Support of Motion for Rehearing (filed Aug. 13, 2021) at 1.

argues that Sierra Club's arguments against the prudence and necessity of the previously incurred ELG costs are untimely and improper.¹⁴

DISCUSSION AND FINDINGS

Kentucky Power and Wheeling Power Company (Wheeling Power), both of which are American Electric Power (AEP) subsidiaries, each own a 50 percent undivided interest in Mitchell, which is located in Moundsville, West Virginia. Kentucky Power acquired its interest in Mitchell in 2012.¹⁵ Mitchell is subject to both the Kentucky and West Virginia Public Service Commission (West Virginia PSC) jurisdiction due to the shared ownership of Kentucky Power and Wheeling Power. On August 4, 2021 the West Virginia PSC granted Wheeling Power's request for a CPCN to construct projects to comply with both CCR and ELG rules, which permits Mitchell to operate through 2040.¹⁶ This Commission's July 15, 2021 Order only granted Kentucky Power's request to construct projects to comply with CCR rules, which require Mitchell to cease coal-fired operations or retire in 2028. Kentucky Power asserted that any conflicting decision would be addressed with both Commissions to determine how to proceed.¹⁷

¹⁴ *Id.* at 3.

¹⁵ Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 7, 2013).

¹⁶ West Virginia Public Service Commission Case No. 20-1040-E-CN, *Application for a Certificate of Public Convenience and Necessity for the Internal Modifications at Coal Fired Generating Plants Necessary to Comply with Federal Environmental Regulations* (WV PSC Aug. 4, 2021).

¹⁷ Kentucky Power's Response to Commission Staff's Third Request for Information (filed June 2, 2021), Item 2.

Regarding the CCR depreciation rate, the Commission will grant rehearing to determine the actual closure date of Mitchell. The West Virginia PSC granted Kentucky Power's affiliates, Wheeling Power and Appalachian Power, a CPCN for the ELG projects at Mitchell. The West Virginia PSC denied a motion to supplement the record with the Final Order denying the ELG project and refused to discuss the possible outcomes of the split decision, which Wheeling Power and Appalachian Power stated could result in "two other conceivable scenarios, ELG work being done to permit only one of the two Mitchell units to operate beyond 2028 and ELG work being done for the entire Mitchell Plant, with all of the costs being borne by WPCo."¹⁸ The actual closing date of the Mitchell Plant, not the end of Kentucky Power's involvement with Mitchell, should be used for the depreciation rates, to avoid Kentucky Power's customers subsidizing the future use of the CCR projects.

Kentucky Power stated that \$2.8 million had been expended on ELG through October 2020, and it expected to expend an additional \$2.0 million through August 2021.¹⁹ Kentucky Power has provided no explanation of the \$1.903 million figure included in the request for rehearing, nor did it originally provide any basis for regulatory asset treatment. No discovery was conducted on the ELG expenses already incurred, so the Commission will grant rehearing to obtain a breakdown of the expenses and why they should qualify for regulatory asset treatment. In the event that a regulatory asset is warranted, the Commission will also determine an appropriate carrying charge.

¹⁸ West Virginia Public Service Commission Case No. 20-1040-E-CN, *Application for a Certificate of Public Convenience and Necessity for the Internal Modifications at Coal Fired Generating Plants Necessary to Comply with Federal Environmental Regulations* (WV PSC Aug. 4, 2021), Order at 3.

¹⁹ Direct Testimony of Brian D. Sherrick at 12.

IT IS THEREFORE ORDERED that:

1. Kentucky Power's motion for rehearing is granted.
2. Kentucky Power shall file responses to the data requests included in Appendix A by September 3, 2021.
3. The procedural schedule set forth in Appendix B to this Order shall be followed for the processing of this matter on rehearing.
4. All other provisions of the Final Order not in conflict with this Order shall remain in full force and effect.

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By the Commission

ENTERED
AUG 19 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00004

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2021-00004 DATED AUG 19 2021

1. Explain Kentucky Power and Wheeling Power's plan regarding Mitchell. Provide updated status reports every ten days through the pendency of this proceeding.
2. Discuss any impact of the conflicting decisions of the Kentucky and West Virginia Public Service Commission regarding ELG projects at Mitchell on AEP's strategic review of Kentucky Assets.
3. Provide the journal entries that Kentucky Power recorded when it acquired Mitchell as approved in Case No. 2012-00578.¹ In the same format, provide the remaining net book value of Mitchell, including all plants accounts and asset retirement obligations, as of the most recent month for which records are available.

¹ Case No. 2012-00578, *Application of Kentucky Power Company for (1) A Certificate of Public Convenience and Necessity Authorizing the Transfer to the Company of an Undivided Fifty Percent Interest in the Mitchell Generating Station and Associated Assets; (2) Approval of the Assumption by Kentucky Power Company of Certain Liabilities in Connection with the Transfer of the Mitchell Generating Station; (3) Declaratory Rulings; (4) Deferral of Costs Incurred in Connection with the Company's Efforts to Meet Federal Clean Air Act and Related Requirements; and (5) All Other Required Approvals and Relief* (Ky. PSC Oct. 7, 2013).

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00004 DATED AUG 19 2021

All initial requests for information to Kentucky Power shall
be filed no later than..... 09/20/2021

Kentucky Power shall file responses to initial requests for
information no later than..... 10/04/2021

All supplemental requests for information to Kentucky Power
shall be filed no later than 10/18/2021

Kentucky Power shall file responses to supplemental requests
for information no later than 11/01/2021

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